FLORIDA HOUSE OF REPRESENTATIVES
BILL ANALYSIS

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BILL #: HB 6003	**COMPANION BILL:** None
TITLE: Recovery of Damages for Medical Negligence Resulting in Death	**LINKED BILLS:** None
SPONSOR(S): Trabulsy and López, J.	**RELATED BILLS:** None

Committee References

Civil Justice & Claims
16 Y, 2 N

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Judiciary

SUMMARY

Effect of the Bill:

HB 6003 expands the scope of damages available under Florida's Wrongful Death Act by removing provisions prohibiting two specified classes of individuals from recovering noneconomic wrongful death damages for claims related to medical negligence. More specifically, the bill removes the prohibition on recovery of noneconomic wrongful death damages in medical negligence cases by the decedent's children who are 25 years of age or older and by parents of a deceased child who was 25 years of age or older at the time of death.

Fiscal or Economic Impact:

The bill may have an indeterminate negative fiscal or economic impact on state and local governments and private entities as the expansion of Florida's Wrongful Death Act may result in an increased number of medical malpractice lawsuits and increased liability in medical malpractice lawsuits. Additonally, the bill may have an indeterminate positive economic impact on decedents' children who are 25 years of age or older and on parents of deceased children who were 25 years of age or older at the time of death as they may be able to recover increased monetary damages.

JUMP TO SUMMARY ANALYSIS RELEVANT INFORMATION BILL HISTORY

ANALYSIS

EFFECT OF THE BILL:

HB 6003 amends s. 768.21, F.S., expanding Florida's Wrongful Death Act (Act) by removing provisions prohibiting two specified classes of individuals from recovering noneconomic wrongful death damages in claims related to medical negligence. The bill does this by removing the medical negligence exception from the Act, which currently prohibits the recovery of noneconomic wrongful death damages in medical negligence cases by the decedent's children who are 25 years of age or older and by parents of a deceased child who was 25 years of age or older at the time of death.

More specifically, under the bill, in wrongful death actions related to medical negligence:

- The decedent's children who are 25 years of age or older, may recover noneconomic damages, including loss of parental companionship, instruction, and guidance and for mental pain and suffering of the children from the date of injury if the decedent has no surviving spouse.
- Parents of a deceased child who was 25 years of age or older at the time of death may recover for mental pain and suffering of the parents from the date of injury if the deceased child has no other survivors. (Section 1).

The bill makes other conforming changes. (Sections 2, 3, and 4).

The bill provides an effective date of July 1, 2026. (Section 5).

FISCAL OR ECONOMIC IMPACT:

STATE GOVERNMENT:

The bill may have an indeterminate negative fiscal impact on state government due to the expansion of Florida's Wrongful Death Act, which may result in an increased number of medical malpractice lawsuits and increased liability in medical malpractice lawsuits.

LOCAL GOVERNMENT:

The bill may have an indeterminate negative fiscal impact on local government due to the expansion of Florida's Wrongful Death Act, which may result in an increased number of medical malpractice lawsuits and increased liability in medical malpractice lawsuits.

PRIVATE SECTOR:

The bill may have an indeterminate negative economic impact on health care providers by exposing them to an increased number of medical malpractice lawsuits and increased liability in medical malpractice lawsuits. Additionally, the bill may have an indeterminate positive economic impact on decedents' children who are 25 years of age or older and on parents of deceased children who were 25 years of age or older at the time of death as they may be able to recover increased monetary damages from state and local government entities and private individuals party to the suit.

RELEVANT INFORMATION

SUBJECT OVERVIEW:

Florida's Wrongful Death Act

"An action for wrongful death is a purely statutory right" that was not available at common law.[1] Florida's Wrongful Death Act (Act)[2] was enacted in 1972 to create this statutory right.[3] Under the Act, when a person's death is caused by a wrongful act, negligence, default, or breach of contract or warranty of any person, and the event would have entitled the decedent to recover damages if he or she had survived, the person who would have been liable if death had not occurred is still liable for specified damages, notwithstanding the injured person's death.[4]

The Act, however, identifies certain limitations on recovery. A wrongful death action must be brought by the decedent's personal representative, who may recover specified damages for the benefit of the decedent's estate and his or her survivors as specified by the Act. A decedent's "survivors" include:

- The surviving spouse of the decedent;
- Children of the decedent, who are under 25 years of age;
- Children of the decedent, who are 25 years of age or older, if there is no surviving spouse;
- Parents of a deceased child who was under 25 years of age at the time of death;
- Parents of a deceased child who was 25 years of age or older at the time of death and who had no other survivors; and

[1] *Toombs v. Alamo Rent-A-Car, Inc.*, 833 So. 2d 109, 111 (Fla. 2002).
[2] Ss. 768.16 – .26, F.S.
[3] Ch. 72-35, Laws of Fla.
[4] S. 768.19, F.S.

- Other blood relatives and adoptive brothers and sisters, if such relative or sibling was partly or wholly dependent on the decedent for support[5] or services.[6, 7]

A "survivor" under the Act may generally recover for:
- The value of lost support and services from the date of the decedent's injury to his or her death; and
- Loss of future support and services from the date of death, reduced to present value.[8]

Further, specified survivors may generally recover for additional economic and noneconomic damages[9], including:
- Loss of companionship and protection if sought by the surviving spouse;[10]
- Loss of companionship, instruction, and guidance if sought by:
  - A child of the decedent which child is under 25 years of age;
  - A child of the decedent which child is 25 years of age or older, if there is no surviving spouse;[11]
- Mental pain and suffering of the survivor, if the survivor seeking damages is:
  - A surviving spouse;[12]
  - A child of the decedent which child is under 25 years of age;
  - A child of the decedent which child is 25 years of age or older, if there is no surviving spouse;[13]
  - A parent of a deceased child who was under 25 years of age at the time of death;
  - A parent of a deceased child who was 25 years of age or older at the time of death and who had no other survivors;[14] and
- Medical and funeral expenses due to the decedent's injury or death if sought by the survivor who paid such expenses.[15]

Additionally, under the Act, the decedent's estate may generally recover for:
- Loss of earnings of the decedent from the date of injury to the date of death.
- Medical and funeral expenses due to the decedent's injury or death that were paid by the estate or have become a debt against the estate.[16]
- Under specified circumstances, the value the estate could reasonably have acquired had the decedent lived, reduced to present value.[17]

Medical Negligence Exception

Prior to 1990, Florida law prohibited a decedent's child who was 25 years of age or older at the time of his or her parent's death and a parent of a deceased child who was 25 years of age or older at the time of death from recovering noneconomic damages in any wrongful death action, regardless of whether it arose out of medical negligence. With the enactment of ch. 90-14, Laws of Fla., ss. 768.18 and 768.21, F.S., were amended to allow such claimants to recover for noneconomic damages under certain circumstances.[18]

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[5] "Support" includes non-monetary and monetary contributions. S. 768.18(3), F.S.
[6] "Services" means tasks, usually of a household nature, regularly performed by the decedent that will be a necessary expense to the survivors of the decedent. These services may vary according to the identity of the decedent and survivor and shall be determined under the particular facts of each case. S. 768.18(4), F.S.
[7] Ss. 768.18, 768.20, and 768.21, F.S.
[8] S. 768.21(1), F.S.
[9] "Noneconomic damages" are nonfinancial losses that would not have occurred but for the death giving rise to the cause of action, including loss of companionship, protection, instruction, or guidance and mental pain and suffering. *See* s. 766.202(8), F.S.
[10] S. 768.21(2), F.S.
[11] S. 768.21(3), F.S.
[12] S. 768.21(2), F.S.
[13] S. 768.21(3), F.S.
[14] S. 768.21(4), F.S.
[15] S. 768.21(5), F.S.
[16] S. 768.21(6), F.S.
[17] *Id*.
[18] Ch. 90-14, Laws of Fla.

However, while it expanded the eligibility to recover noneconomic wrongful death damages, ch. 90-14, Laws of Fla., also created a medical negligence exception, upholding the prior prohibition in part, by providing that, in the case of the death of a parent due to medical negligence, a surviving child who is 25 years of age or older may not seek noneconomic wrongful death damages; and, in the case of the death of a child who was 25 years of age or older due to medical negligence, a surviving parent may not seek noneconomic wrongful death damages.[19]

In 2000, in *Mizrahi v. North Miami Medical Center, Ltd.*, the appellants argued that the medical negligence exception to the Act violated the Florida Constitution's Equal Protection clause without a rational basis because it treated surviving children who are 25 years of age or older whose parent died as a result of medical malpractice differently than surviving children who are 25 years of age or older whose parent died as a result of a cause other than medical malpractice.[20] The Court disagreed, noting that when carving out this exception the Legislature "referred to and discussed the medical malpractice crisis and its adverse impact on the accessibility of health care."[21] The Court believed that the medical negligence exception would "limit claims made overall and would directly affect the cost of providing health care by making it less expensive and more accessible."[22] As such, the Florida Supreme Court upheld this exception as constitutional, holding that it is rationally related to controlling healthcare costs and to the accessibility of medical care to Florida residents.[23]

However, in 2019, in *Santiago v. Rodriguez*, the Third District Court of Appeal of Florida certified a question of great public importance to the Florida Supreme Court regarding the Court's previous decision in *Mizrahi* in light of subsequent Florida Supreme Court decisions, such as the 2014 holding in *Estate of McCall v. U.S.*[24] In *McCall*, the Court, in discussing the medical malpractice crisis, held that "a crisis is not a permanent condition," noting that "conditions can change, which remove or negate the justification for a law, transforming what may have once been reasonable into arbitrary and irrational legislation."[25] Moreover, the Court in *McCall* concluded that the available data did not support, or at minimum no longer supported, the existence of a medical malpractice crisis in Florida.[26] Given these findings, the *Santiago* court questioned whether the Florida Supreme Court would still find the medical negligence exception constitutional given the current conditions in the State.[27] The Florida Supreme Court has not since revisited this issue.

Other States

Some other states maintain more stringent limitations than those currently imposed under Florida law on the recovery of noneconomic damages in any wrongful death action, not just those related to medical malpractice. For instance, Alabama prohibits the recovery of compensatory damages[28] entirely, including any noneconomic damages, in any wrongful death claim, and instead, only allows for the recovery of punitive damages.[29, 30] In Alaska, a parent of a deceased child is prohibited from recovering noneconomic damages in a wrongful death action.[31]

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[19] S. 768.21(8), F.S.
[20] 761 So. 2d 1040 (Fla. 2000).
[21] *Id*. at 1042.
[22] *Id*.
[23] *Id*. at 1043.
[24] *Santiago v. Rodriguez*, 281 So. 3d 603, 608 (Fla. 3d DCA 2019).
[25] 134 So. 3d 894, 913 (Fla. 2014).
[26] *Id*. at 906.
[27] *See generally Brown v. Nagelhout*, 84 So. 3d 304, 309 (Fla. 2012) ("The doctrine of stare decisis bends where there has been a significant change in circumstances since the adoption of the legal rule or where there has been an error in legal analysis").
[28] Compensatory damages are awarded to a complainant to compensate him or her for a proven injury or loss, and include both economic and noneconomic damages. Black's Law Dictionary 174 (3d. pocket ed. 2006).
[29] *King v. National Spa and Pool Institute, Inc.*, 607 So. 2d 1241, 1246 (Ala. 1992).
[30] Punitive damages are generally awarded where the defendant acted with recklessness, malice, or deceit and are intended to punish the defendant. Black's Law Dictionary 175 (3d. pocket ed. 2006).
[31] Alaska Stat. Ann. § 09.55.580.

Further, some states, such as Indiana,[32] only allow the recovery of noneconomic damages by a child of the decedent, or parents of a deceased child, under very limited circumstances.

Alternatively, some states have begun expanding the scope of recovery as it relates to the wrongful death of a child, allowing parents to recover noneconomic damages regardless of whether the child is a minor child. The Supreme Court of Vermont observed that "children have an intrinsic value to their parents regardless of who is supporting whom at the time of death."[33] In expanding the scope of recovery related to the wrongful death of a child who is not a minor, the Supreme Court of Vermont relied on the following reasoning from the Arizona Supreme Court:

> Surely nature recoils from the suggestion that the society, companionship and love which compose [a parent-child relationship] automatically fade upon emancipation; while common sense and experience teach that the elements of [such a relationship] can never be commanded against a child's will at any age. [Such a] relationship, admittedly intangible, is ill-defined by reference to the ages of the parties and ill-served by arbitrary age distinctions. Some [parent-child] relationships will be blessed with mutual caring and love from infancy through death while others will always be bereft of those qualities. Therefore, to suggest as a matter of law that [a] compensable [parent-child relationship] begins at birth and ends at age eighteen is illogical and inconsistent with common sense and experience. Human relationships cannot and should not be so neatly boxed.[34]

While many states' statutes contain various legal intricacies related to the recovery of noneconomic damages in wrongful death actions, Florida remains the only state to distinguish which survivors may recover noneconomic damages in wrongful death actions when such an action is brought based on medical negligence.[35]

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[32] A parent of a deceased child may only recover noneconomic damages in a wrongful death action if the child has no other survivors or dependents and is less than 20 years of age or less than 23 years of age and is enrolled in a postsecondary educational institution or a career and technical education school or program. Ind. Code Ann. § 34-23-2-1.

[33] *Clymer v. Webster*, 156 Vt. 614 (Vt. 1991).

[34] *Howard Frank, M.D., P.C. v. Superior Ct. of State of Ariz., In & For Maricopa Cnty.*, 150 Ariz. 228, 233 (Ariz. 1986).

[35] *Carter v. City of Birmingham*, 444 So. 2d 373 (Ala. 1983); Alaska Stat. Ann. § 09.55.580; Ariz. Rev. Stat. Ann. §§ 12-612 and 12-613; Ark. Code Ann. § 16-62-102; Cal. Civ. Proc. Code §§ 377.60 and 377.61; Colo. Rev. Stat. Ann. §§ 13-21-201 and 13-21-203; Conn. Gen. Stat. Ann. § 52-555; 10 Del.C. § 3724; D.C. Code Ann. § 16-2701; Ga. Code Ann., §§ 51-4-2 and 51-4-4; Haw. Rev. Stat. Ann. § 663-3; I.C. § 5-311; 740 Ill. Comp. Stat. Ann. 180/2; Ind. Code Ann. §§ 34-23-1-2 and 34-23-2-1; Iowa Code Ann. § 633.336; Kan. Stat. Ann. §§ 60-1902 and 60-1903; Ky. Rev. Stat. Ann. § 411.130; La. Civ. Code Ann. art. 2315.2; Me. Rev. Stat. Ann. tit. 18-C, § 2-807; Md. Code Ann., Cts. & Jud. Proc. § 3-904; Mass. Gen. Laws Ann. ch. 229, §§ 1 and 2; Mich. Comp. Laws Ann. § 600.2922; Minn. Stat. Ann. § 573.02; Miss. Code Ann. § 11-7-13; Mo. Ann. Stat. §§ 537.080 and 537.090; Mont. Code Ann. § 27-1-513; *In re Est. of Bennett*, 308 P.3d 63, 67 (Mont. 2013); Neb. Rev. Stat. Ann. § 30-810; Nev. Rev. Stat. Ann. § 41.085; N.H. Rev. Stat. Ann. § 556:12; N.J. Stat. Ann. § 2A:31-5; N.M. Stat. Ann. § 41-2-3; N.Y. Est. Powers & Trusts Law § 5-4.3; N.C. Gen. Stat. Ann. § 28A-18-2; N.D. Cent. Code Ann. §§ 32-03.2-04 and 32-21-03; Ohio Rev. Code Ann. § 2125.02; Okla. Stat. Ann. tit. 12, § 1053; Or. Rev. Stat. Ann. § 30.020; 42 Pa. Stat. and Cons. Stat. Ann. § 8301; 10 R.I. Gen. Laws Ann. § 10-7-1.2; S.C. Code Ann. §§ 15-51-20 and 15-51-40; S.D. Codified Laws §§ 21-5-5 and 21-5-7; Tenn. Code Ann. §§ 20-5-106 and 20-5-113; Tex. Civ. Prac. & Rem. Code Ann. §§ 71.004 and 71.010; Utah Code Ann. §§ 78B-3-102, 78B-3-105, and 78B-3-106; Vt. Stat. Ann. tit. 14, § 1492; Va. Code Ann. §§ 8.01-52 and 8.01-53; Wash. Rev. Code Ann. §§ 4.20.010, 4.20.020, and 4.24.010; W. Va. Code Ann. § 55-7-6; Wis. Stat. Ann. § 895.04; Wyo. Stat. Ann. § 1-38-102.

RECENT LEGISLATION:

YEAR	BILL #	HOUSE/SENATE SPONSOR(S)	OTHER INFORMATION
2025	HB 6017 - Recovery of Damages for Medical Negligence Resulting in Death	Trabulsy, López, J./ *Yarborough*	The Governor vetoed the bill on May 29, 2025.
2022	HB 6011 - Recovery of Damages in Claims for Medical Negligence	Roach/ *Rodriguez*	The bill passed the House but died in the Senate.
2021	HB 651 - Recovery of Damages in Claims for Medical Negligence	Roach/ *Rodriguez*	The bill passed the House but died in the Senate.

BILL HISTORY

COMMITTEE REFERENCE	ACTION	DATE	STAFF DIRECTOR/ POLICY CHIEF	ANALYSIS PREPARED BY
Civil Justice & Claims Subcommittee	16 Y, 2 N	10/15/2025	Jones	Leshko
Judiciary Committee			Kramer	Leshko